

## HOUSE BILL NO. 146

INTRODUCED BY GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; ~~REPEALING SECTION 17-8-231, MCA; REPEALING SECTION 17-8-231, MCA;~~ AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Short title.** [Sections 1 through 12] may be cited as the "Montana False Claims Act".

**NEW SECTION.** **Section 2. Definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.

(2) "Government attorney" means:

(a) the chief attorney for a governmental entity; or

(b) the attorney general with respect to the state, except a unit of the university system.

(3) "Governmental entity" means:

(a) the state;

(b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or

(c) a unit of the Montana university system.

(4) "Knowingly" means that a person, with respect to information, does any of the following:

(a) has actual knowledge of the information;

(b) acts in deliberate ignorance of the truth or falsity of the information; or

(c) acts in reckless disregard of the truth or falsity of the information.

(5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

**NEW SECTION. Section 3. ~~Causes of action~~ FALSE CLAIMS -- PROCEDURES -- PENALTIES.** (1) A person causing damages in excess of \$500 to a governmental entity is liable, as provided in [sections 10 and 11], for any of the following acts:

(a) knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval;

(b) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity;

(c) conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity;

(d) having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;

(e) being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used;

(f) knowingly buying or receiving as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;

(g) knowingly making, using, or causing to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity OR ITS CONTRACTORS; or

(h) as a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.

(2) ~~A~~ IN A CIVIL ACTION BROUGHT UNDER [SECTION 5 OR 6], A court shall assess not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:

1 (a) The person committing the act furnished the government attorney with all information known to that  
2 person about the act within 30 days after the date on which the person first obtained the information.

3 (b) The person fully cooperated with any investigation of the act by the government attorney.

4 (c) At the time that the person furnished the government attorney with information about the act, a  
5 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and  
6 the person did not have actual knowledge of the existence of an investigation into the act.

7 (3) Liability under this section is joint and several for any act committed by two or more persons.

8 (4) This section does not apply to claims, records, or statements made in relation to claims filed with  
9 the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or  
10 statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources  
11 and conservation under Title 77.

12 (5) A private citizen ~~or governmental entity~~ may not file a complaint OR CIVIL ACTION:

13 (a) against a governmental entity or an officer or employee of a governmental entity arising from  
14 conduct by the officer or employee ~~related to the officer's or employee's service~~ WITHIN THE SCOPE OF THE  
15 OFFICER'S OR EMPLOYEE'S DUTIES to the governmental entity;

16 (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative  
17 civil penalty proceeding in which an agency of the governmental entity is already a party;

18 (c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or  
19 administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the  
20 senate or house or representatives, the state auditor or legislative auditor, the auditor or legislative body of a  
21 political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the  
22 information on which the allegations are based and, before filing the complaint OR CIVIL ACTION, voluntarily  
23 provided the information to the agency of the governmental entity that is involved with the claim that is the basis  
24 for the complaint OR CIVIL ACTION and unless the information provided the basis or catalyst for the investigation,  
25 report, hearing, or audit that led to the public disclosure; or

26 (d) that is based upon information discovered by a present or former employee of the governmental  
27 entity during the course of employment unless the employee first, in good faith, exhausted existing internal  
28 procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the  
29 governmental entity failed to act on the information provided within a reasonable period of time.

30

1        **NEW SECTION. Section 4. Limitation of actions.** ~~An~~ A COMPLAINT OR CIVIL action may not be filed  
2        under [section 3 5 OR 6] more than 3 years after the date on which an official of the governmental entity charged  
3        with responsibility to act in the circumstances discovers the act or more than 10 years after the date on which  
4        the act occurred, whichever occurs first.

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6        **NEW SECTION. Section 5. Investigation and ~~complaint~~ CIVIL ACTION by government attorney.** A  
7        government attorney may investigate an alleged violation of [SECTION 3] and file a ~~complaint under [section 3]~~  
8        CIVIL ACTION.

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10       **NEW SECTION. Section 6. Complaint by private citizen -- CIVIL ACTION.** (1) A private citizen may file  
11       with the government attorney a notice alleging a violation of [section 3] against a governmental entity of which  
12       the private citizen is a resident. The private citizen shall file A COMPLAINT with the government attorney ~~a brief,~~  
13       ~~including~~ THAT INCLUDES a written disclosure of material evidence and information alleging violations.

14       (2) Within 60 days after receiving a notice and ~~brief~~ COMPLAINT, the government attorney may elect to  
15       file a ~~complaint under [sections 3 and 5]~~ CIVIL ACTION and may, for good cause shown, move the court for  
16       extensions of the time for filing ~~a complaint~~ AN ACTION.

17       (3) If the government attorney files a ~~complaint~~ CIVIL ACTION, the private citizen may enter the action as  
18       a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking.  
19       If the government attorney does not file a ~~complaint~~ CIVIL ACTION within the time allowed under subsection (2),  
20       the private citizen may file a ~~complaint~~ CIVIL ACTION.

21       (4) The court shall permit the government attorney to intervene in an action that the government  
22       attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity  
23       are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains  
24       principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must  
25       be awarded under [sections 10 and 11] as if the government attorney had not intervened.

26       (5) After a private citizen files a ~~complaint~~ CIVIL ACTION, no other private citizen may file a ~~complaint~~ CIVIL  
27       ACTION based on the facts underlying the pending action.

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29       **NEW SECTION. Section 7. Dismissal of private citizen's ~~complaint~~ CIVIL ACTION.** On the motion  
30       of a government attorney, the court may dismiss a private citizen's ~~complaint~~ CIVIL ACTION for good cause. If an

1 intervening government attorney seeks dismissal of a private citizen's ~~complaint~~ CIVIL ACTION, the private citizen  
2 must be notified by the government attorney of the filing of the motion to dismiss and must be given an  
3 opportunity to oppose the motion and present evidence at a hearing.

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5 **NEW SECTION. Section 8. Settlement.** An action may be settled if the court determines after a  
6 hearing that the proposed settlement is fair, adequate, and reasonable under all the circumstances. In a private  
7 citizen's action in which the government attorney intervened and seeks a settlement, the private citizen may  
8 present evidence at the settlement hearing.

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10 **NEW SECTION. Section 9. Burden of proof -- effect of criminal conviction.** (1) The plaintiff in an  
11 action under [section 3 5 OR 6] shall prove each essential element of the cause of action, including damages,  
12 by a preponderance of the evidence.

13 (2) A person convicted of or who pleaded guilty or nolo contendere to a criminal offense may not deny  
14 the essential elements of the offense in an action under [section 3 5 OR 6] that involves the same event or events  
15 as the criminal proceeding.

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17 **NEW SECTION. Section 10. Distribution of damages and civil penalty.** If an action is settled or the  
18 governmental entity OR PRIVATE CITIZEN prevails in an action:

19 (1) filed by a governmental entity under [section 6(2)] and the private citizen elected not to enter the  
20 action as a coplaintiff, except as provided in subsection (3), the private citizen is entitled to between 10% and  
21 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the  
22 settlement or judgment;

23 (2) filed by a private citizen EITHER AS PLAINTIFF OR AS COPLAINTIFF, except as provided in subsection (3),  
24 the private citizen is entitled to between ~~25%~~ 15% and 50%, as determined by the court, of any damages and  
25 civil penalty awarded the governmental entity in the settlement or judgment;

26 (3) and if a private citizen referred to in subsection (1) or (2) participated in the act or acts found to be  
27 in violation of [section 3], an award of damages and civil penalty to the private citizen are at the discretion of the  
28 court;

29 (4) the governmental entity is entitled to any damages and civil penalty not awarded to a private citizen  
30 and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that

1 if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must  
2 first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited  
3 in the general fund of the governmental entity.

4 (5) UNLESS OTHERWISE PROVIDED, THE REMEDIES OR PENALTIES PROVIDED BY [SECTIONS 1 THROUGH 12] ARE  
5 CUMULATIVE TO EACH OTHER AND TO THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THE STATE.  
6

7 NEW SECTION. Section 11. Costs and attorney fees. A governmental entity in an action in which  
8 its government attorney filed a ~~complaint~~ CIVIL ACTION or intervened is entitled to its reasonable costs and  
9 attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In  
10 an action in which outside counsel represents a governmental entity, the costs and attorney fees awarded a  
11 governmental entity must equal the outside counsel's charges reasonably incurred by the governmental entity  
12 for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are  
13 awarded a governmental entity, they must be calculated by reference to the hourly rate charged by the  
14 department of justice agency legal services bureau for the provision of legal services to state agencies,  
15 multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any  
16 expenses reasonably incurred in the prosecution of the action. A private citizen who is a plaintiff or coplaintiff  
17 is entitled to reasonable costs and attorney fees if the action is settled favorably for the governmental entity or  
18 the governmental entity prevails in the action. A person who is the subject of a ~~complaint~~ CIVIL ACTION and who  
19 prevails in an action that is not settled ~~and that the court finds was clearly frivolous or brought solely for~~  
20 ~~harassment purposes~~ AND THAT THE COURT FINDS WAS CLEARLY FRIVOLOUS OR BROUGHT SOLELY FOR HARASSMENT  
21 PURPOSES is entitled to the person's reasonable costs and attorney fees, which must be equitably apportioned  
22 against the private citizen and governmental entity if a private citizen and a governmental entity were coplaintiffs.  
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24 NEW SECTION. Section 12. Prohibitions on employers -- employee remedies. (1) A governmental  
25 entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information  
26 to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of  
27 a violation of [section 3] or an action brought pursuant to [section 3 5 OR 6].

28 (2) A governmental entity may not discharge, demote, suspend, threaten, harass, or deny promotion  
29 to or in any other manner discriminate against an employee in the terms and conditions of employment because  
30 of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation

1 of [section 3].

2 (3) (a) A governmental entity that violates the provisions of subsection (2) is liable for:

3 (i) reinstatement to the same position with the same seniority status, salary, benefits, and other  
4 conditions of employment that the employee would have had but for the discrimination;

5 (ii) back pay plus interest on the back pay;

6 (iii) compensation for any special damages sustained as a result of the discrimination; and

7 (iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

8 (b) An employee may file an action for the relief provided in this subsection (3).

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10 ~~NEW SECTION. Section 13. Repealer. Section 17-8-231, MCA, is repealed.~~

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12 NEW SECTION. SECTION 13. REPEALER. SECTION 17-8-231, MCA, IS REPEALED.

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14 NEW SECTION. Section 14. Applicability. [This act] applies to causes of action arising after [the  
15 effective date of this act].

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